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Legal systems in Mexico: overview

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A Q&A guide to the legal system in Mexico.

The Q&A gives a high level overview of the key legal concepts including the constitution, system of governance and the general legislative process; the main sources of law; the court structure and hierarchy; the judiciary and its appointment; the general rules of civil and criminal litigation, including reporting restrictions, evidentiary requirements, the roles of the judge and counsel, burdens of proof and penalties.

To compare answers across multiple jurisdictions, visit the *Legal Systems: Country Q&A tool*.

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Constitution

Form

1. What form does your constitution take?

The Constitution of the United Mexican States (Constitution) is:

- In written form.
- Federal.
- Rigid: a complex legislative procedure must be followed to amend any of its provisions.

It was enacted on 5 February 1917 and is the supreme law in the Mexican legal system, along with the international treaties to which Mexico is a party.

The Constitution, which comprises 136 Articles and was most recently amended in 2017, sets out the structure and organisation of the Mexican State, the powers of and limitations on its institutions and the fundamental rights of all Mexicans, along with the mechanisms to enforce such rights.

It is divided in two main sections, one setting out the organisational structure of the state and the other setting out the individual rights guaranteed therein.

The organisational section Titles 2-5 of the constitution establishes the framework and the institutions of state and the division of powers at the federal and local levels, defining the scope of competence of each of those powers.

The principles section Title 1 of the constitution sets out the individual rights guaranteed by the Constitution.

General constitutional features

2. What system of governance is provided for?

System

Article 40 of the Constitution establishes that Mexico is a representative, democratic and federal republic composed of 31 states and Mexico City. Each state has sovereignty in matters concerning its internal affairs but is part of the federation established according to the principles of the Constitution.

Head of state

Mexico has a presidential system, with the President as the head of state.

An election for a new president occurs every six years. Mexicans over eighteen years old who are registered with the National Electoral Institute have the right to vote in a democratic procedure and the candidate who receives the most votes (a simple majority) will be designated as the new constitutional president of Mexico.

Structure

The President is both head of state and head of the government, in charge of the federal public administration.

The federal public administration operates both through a centralised and a government-controlled scheme (*Article 1, Organizational Law of The Federal Public Administration (Ley Orgánica de la Administración Pública Federal)*).

The centralised administration is composed of the:

- Office of the Presidency of Mexico.
- Ministries of State.
- Office of the Legal Counsel to the President.
- Coordinated regulatory entities.
- The government-controlled administration is composed of the:
 - Decentralised bodies.
 - State participation companies.
 - National credit institutions.
 - National credit auxiliary organisations.
 - National insurance and surety institutions and trusts.

3. Does the constitution provide for a separation of powers?

The separation of powers is established by Article 49 of the Constitution which divides the Supreme Power of the Federation (*Supremo Poder de la Federación*) into the legislative, executive and judicial branches, as follows:

- Legislative power is vested in the Congress of the Union (*Congreso de la Unión (Congress)*).
- Executive power resides in the executive branch, the Federal Public Administration headed by the President of the United Mexican States.
- Legislative power is vested in the Congress of the Union (*Congreso de la Unión (Congress)*).
- Judicial power is held by the Supreme Court of Justice (*Suprema Corte de Justicia de la Nación (Supreme Court)*).

The separation of powers is not absolute. Checks and balances exist in the mechanism by which each of the powers of the Federation and every level of government has limited attributions, depending on the others to function correctly.

Some aspects of power may be shared among the three branches, for example, the legislature has the power to impeach:

Senators and congressmen to the Congress of the Union.

- Justices of the Nation's Supreme Court of Justice.
- Councillors of the Federal Judicial Council.
- State Secretaries.
- The Attorney General of the Republic.
- Circuit Magistrates and District Judges.
- The Chairman Councillor.
- Electoral Councillors and the Secretary of the Federal Electoral Institute.
- Magistrates of the Electoral Tribunal.
- Members of the independent constitutional bodies.
- The general managers and their equivalents in decentralised agencies
- Government-controlled corporations, other associations assimilated to these and public trusts.

As well as the power of impeachment, there is the unconstitutionality action, where the legislative or executive powers can ask the judicial power to review the constitutionality of a certain law.

The system is designed so that no branch of the state has more power than the others. However, if the same party has both the majority of the Congress representation and the elected President, they would have almost absolute power.

4. What is the general legislative process?

Proposal and drafting

The right to initiate laws or decrees is vested in the President, the deputies and senators of the Federal Congress, the state legislatures and Mexican citizens (where they make up at least 13% of registered voters) (*Article 71, Constitution*).

Congress constitutes the country's federal legislative branch, comprising the Chamber of Deputies (*Cámara De Diputados*) and the Chamber of Senators (*Cámara De Senadores (Senate)*). Among its other powers, the Congress has exclusive power to legislate on certain subjects including citizenship, naturalisation, immigration and national security among several others] and in practice initiates most legislation.

Laws and regulations are created by:

- Decisions made in Congress.
- Decrees of the President.
- Binding Court Precedents are created by:
 - When Mexico's Supreme Court rules the same way on five consecutive cases.
 - When the Federal Circuit Courts unanimously rule the same way on five consecutive cases, in which case all lower federal courts must follow their decisions.

Scrutiny

Bills whose passage or decree is not the exclusive right of one of the chambers must be discussed successively by both, under the Rules of Procedure which relate to form, stages and the procedure for debates and the casting of votes.

The process for the enactment of laws and decrees can be started in either of the two chambers, except for bills dealing with loans, taxes or the recruitment of troops, which must all be discussed first in the Chamber of Deputies.

Either of the chambers can approve bills. The approval can be total or partial.

Once a bill is approved, it is sent to the executive branch to be accepted, commented on or declined (veto right). This veto right is not absolute and certain rules must be followed by the President in exercising it. If the executive power has comments on the bill, the bill will return to the chamber where it originated to be amended accordingly. Once amended by that chamber, it goes back to the President for approval.

Enactment

Once the bills are approved by the President, they must be published in the Official Federal Gazette (*Diario Oficial de la Federacion*). Bills become effective on the date stated in the publication or three days after its publication if no specific date is set.

5. Is there a doctrine by which the judiciary can review legislative and executive actions?

There are several ways in which the judiciary can review both legislative and executive actions. The most important are the following:

- **Amparo action** (*juicio de amparo*) (*Articles 94, 103 and 107, Constitution*). This is a constitutional appeal and can be filed by individuals or groups against (among others):
 - unconstitutional laws;
 - final administrative decisions, awards and resolutions affecting private parties.
- **Constitutional Controversy** (*Articles 46, 94, 105 and 106, Constitution*). An action can be brought before the Supreme Court of Justice to solve conflicts arising between:
 - federal powers, powers of the states and Mexico's city government entities;
 - federal, state, municipal or Mexico City governments;
 - federal and state courts on questions of jurisdiction.
- The action can be used to challenge any type of violation of the Constitution.
- **Unconstitutionality action** (*Articles 94 and 105, Constitution*). This is an action filed before the Supreme Court of Justice to determine whether a federal, federal district (Mexico City) state or municipal law (but not a specific ruling of a government authority or court decision) conflicts with the federal Constitution.
- The action can only be filed by the federal and state chamber of representatives, the senate, the President through the government legal counsel, registered political parties, the human rights national commission, the federal general attorney and the organisms stated in Article 6 of the constitution (*Article 105, Constitution*).

6. Are certain emergency powers reserved for the executive?

Under Article 29 of the Constitution, in cases of emergency (such as an invasion) where there is a serious danger to the public, the President, with approval of the Congress, can suspend any constitutional rights necessary for the purposes of public safety, for a limited time.

Congress must grant such authorisations as it deems necessary to enable the President to deal with the emergency.

However, any decree enacted under emergency powers cannot restrict or suspend the exercise of any of the following rights and principles:

- Rights to non-discrimination, to legal personality, to life, of personal integrity, of family protection, to have a name or to have a nationality.
- Children's rights.
- Political rights.
- Freedom of thought and of religion.
- Principles of legality and retroactivity.
- Prohibition on the death penalty, on slavery and servitude, of disappearance and torture.

- The judicial guarantees that are necessary to protect these rights and principles.

Executive orders passed by the President during the restriction or suspension of constitutional rights must be immediately reviewed by the Supreme Court, which must rule on their constitutionality and validity as soon as possible (*Article 29*).

7. Are human rights constitutionally protected?

Human rights are protected under Articles 1-29 (*Title I, Chapter I, Constitution*).

Article 1 also states that none of the protected rights can be restricted or suspended, except in the cases and under the conditions established by the Constitution itself.

Amendment

8. By what means can the constitution be amended?

8. The Constitution can only be amended through a legislative procedure in which the additions and amendments must be agreed by the Congress, by the vote of two-thirds of the members present, and must be approved by the majority of the state and Mexico City's legislatures.

Legal system

Form

9. What form does your legal system take?

The Mexican legal system follows the civil law tradition. In addition, only written laws will be valid and effective (*ius positivismo*).

Main sources of law

10. What are the main domestic sources of law?

The formal sources of law are:

- The Constitution.
- Legislation.
- Judicial precedents.
- Customs.
- Individualised norms (Official Mexican Standards, *Norma Oficial Mexicana* (NOM), which are official, compulsory standards and regulations).
- Doctrine.

11. To what extent do international sources of law apply?

If any international treaty to which Mexico is a party grants broader legal protection to the fundamental rights of any individual than the Constitution and/or any federal or local laws, the Mexican authorities will be obliged to apply that international treaty, due to the pro persona principle ("the person first").

In accordance with the territoriality principle (under which a state can prosecute crimes committed within its borders), Mexican laws will be applicable to all people located in Mexico, and to all acts or facts which occurred within its territory or jurisdiction, unless those laws designate a foreign law as applicable and/or the treaties or conventions to which Mexico is a party indicate differently.

Court structure and hierarchy

12. What is the general court structure and hierarchy?

Court structure and hierarchy are set out in Article 94 of the Constitution.

The judicial power of the United Mexican States is divided into federal and state systems. The highest court is the Supreme Court of Justice in Mexico City. It consists of 11 judges and one chief justice, all appointed by the president and confirmed by the Senate or the Permanent Committee (a committee of the chamber of deputies that attends matters when the chamber is not in sessions period).

The Supreme Court of Justice can meet in joint session or in separate chambers, depending on the type of case before it. This court is divided into four chambers, each with five justices. These are the:

- Penal Affairs Chamber.
- Administrative Affairs Chamber.
- Civil Affairs Chamber.
- Labor Affairs Chamber.
- An Auxiliary Chamber is responsible for taking cases which cannot be heard in the four regular chambers.

Court rulings are decided on the basis of majority opinion. Rulings by the separate chambers can be overturned by the full court.

There are three levels of federal courts under the Supreme Court:

- **Collegiate circuit courts.** The collegiate circuit courts, which have three magistrates each deal with appeals and the protection of individual rights, and mainly hear amparo cases (see [Question 5](#)). They are located in Mexico City, Toluca, Guadalajara, Monterrey, Hermosillo, Puebla, Veracruz, Torreón, San Luis Potosí, Villahermosa, Morelia, and Mazatlán. There are a few specialised courts for example, for antitrust matters and telecommunications cases.
- **Unitary circuit courts.** These courts, which each have six magistrates, also handle appeals cases and are located in Mexico City, Toluca, Guadalajara, Monterrey, Hermosillo, Puebla, Mérida, Torreón, and Mazatlán.
- **District courts**, each with one judge.

Federal judges for the lower courts are appointed by the Supreme Court.

13. To what extent are lower courts bound by the decisions of higher courts?

The judicial precedents issued by the Supreme Court, whether in plenary sessions or in chambers, must be followed by the following courts (local or federal):

- Supreme Court.
- Collegiate circuit courts.
- Single-judge circuit courts.
- District courts.
- Military Tribunal.
- Judicial courts of Common Order of the states and of Mexico City (first instance courts in every state and in Mexico City, which later can be appealed at appellate collegiate courts in every state and in Mexico City).

- Administrative courts.
- Labour courts.

Moreover, the judicial precedents issued by the Collegiate Circuit Courts, whether in full court or in chambers, must be followed by all the courts in Mexico subject to their hierarchy or whose acts may be subject to their respective jurisdictions.

14. Are there specialist courts for certain legal areas?

Yes. One of the criteria for determining which court will be competent is the subject matter.

There are several specialised administrative courts that decide different types of disputes, including (among others) those relating to:

- Broadcasting.
- Telecommunication and antitrust.
- Employment.
- Taxation.

15. Are other quasi-legal authorities commonly used?

Under Mexican Law, not only judges are empowered to resolve conflicts or disputes. There are alternatives through which a third independent party can decide on or help the disputing parties to resolve their dispute.

These ADR mechanisms are regulated in the Constitution and are:

- Mediation.
- Conciliation.
- Arbitration.

16. Does the constitution provide for an independent judiciary?

The independence of the judiciary is set out in Article 17 of the Constitution which provides that:

- Court services are free and court fees are prohibited.
- Federal and local laws must guarantee the independence of the courts and the means of enforcing their rulings.
- Courts must issue their rulings in a prompt, complete and impartial manner.

17. How are members of the judiciary typically appointed?

The qualifications and requirements for appointing judges for the various courts are set out in the Constitution Articles 95 to 101 and the Organizational Law of the Federal Judicial Branch.

Appointment

Judges are appointed as follows:

- **Supreme Court.** The President must submit a list of three candidates to the Senate, who interview them and then choose one by a two-thirds majority vote within 30 days of the interview. This period cannot be extended. If the Senate fails to appoint one by the deadline, the President must appoint one person from the list.

- If the Senate rejects all three candidates on the list, the President must submit a new one and the process is repeated. If the Senate rejects this second list completely, the President must appoint one person from the new list.
- Judges of the Supreme Court are appointed for a 15-year term and they can be removed only in the cases provided in Title Four of the Constitution. They are entitled to a retirement payment at the end of their term.
- Judges cannot serve a second term, unless they have held the office as provisional or interim judges.
- **Collegiate circuit courts and district courts.** The designation of judges for Collegiate circuit courts and district courts is done through a competitive internal examination and an open competitive examination set by the Federal Judicial Council.
- Collegiate Circuit judges are appointed for six years, and they can be ratified for another six-year period. These judges can be removed for the reasons set out in the Internal Organizational Law of the Federal Court System / or by forced retirement once they reach 75.
- District Court judges are appointed for six years, and they can be ratified for another six-year period. These judges can be removed by being appointed to the collegiate circuit court, for the reasons set out in the law or by forced retirement once at 75.

Qualifications

Qualifications needed by judges are:

- **Supreme Court:** Judges should be persons who have served with efficiency, ability and integrity in the dispensation of justice, or who have distinguished themselves by their honour, ability and career in the legal field and:
 - be a Mexican citizen by birth, with legal capacity to exercise political and civil rights;
 - be at least 35 years old;
 - have held a law degree for at least 10 years, issued by an institution legally empowered for that purpose;
 - have a good reputation and not have been convicted of a crime punishable by imprisonment for more than one year or by any other penalty in the case of convictions for robbery, fraud, forgery, breach of confidence or any other which would seriously damage good reputation;
 - have lived in the country the last two years before appointment;
 - not to have been a Secretary of State, Attorney General, senator, federal representative or constitutional governor the whole year before the appointment;
- **Collegiate Circuit Courts:** Judges must :
 - be a Mexican citizen by birth, not having acquired any other nationality, with legal capacity to exercise political and civil rights;
 - be at least 35 years old;
 - have a law degree, held for at least five years, issued by an institution legally empowered for that purpose;
 - have a good reputation and not have been convicted of a crime punishable by imprisonment for more than one year.
- **District Courts:** Judges must:
 - be a Mexican citizen by birth, not having acquired any other nationality, and have legal capacity to exercise political and civil rights.
 - be at least 30 years old.
 - have a law degree, held for at least five years, issued by an institution legally empowered for that purpose.
 - have a good reputation and not have been convicted of a crime punishable by imprisonment for more than one year.

Litigation (civil and criminal)

18. Do the courts use an adversarial, non-adversarial or other system?

A new oral adversarial criminal justice system was introduced in 2008 by amendments to the Constitution (in Articles 16, 17, 18, 19, 20, 21 and 22, Article 73 (subparagraphs XXI and XXIII, Article 115 (subparagraph VII), and Article 123 (Section B, subparagraph XIII)).

This criminal justice system is governed by the following principles(*Article 20*):

- Publicity.
- Contradiction.
- Concentration.
- Continuity.
- Immediacy.

19. Who is responsible for gathering evidence?

In criminal matters, the public prosecutor is responsible for gathering the evidence, helped by the police force.

The public prosecutor and the police must record all their actions within the investigation of the crimes, using any necessary means to ensure that the information is complete, exhaustive and accurate, and that any person legally entitled has access to such information.

20. Is evidence independently examined before a trial?

During the investigation stage and once the parties are summoned to the initial hearing, the defendant has the right to consult the investigation records made by the public prosecutor and obtain a copy, with the appropriate opportunity to prepare for the defence. If the public prosecutor refuses to allow access to the records or provide copies to the defendant, the defendant can request the managing judge to make an appropriate order. Both parties have the right to independently examine the evidence provided to the judiciary for the trial.

21. Are trials/hearings open to the public?

Civil law

In civil matters, the proceedings are not oral and only those who have a lawful interest in the trial can participate and be informed of the proceeding. This means that neither the public nor the press can easily approach the judiciary and obtain information or copies of the trial documents.

Criminal law

Since the criminal procedure is adversarial and oral, based on the principles of publicity, contradiction, concentration, continuity and immediacy, the hearings are open to the public, keeping in mind that at all times the authorities must respect and protect both the dignity of the accused and the victim. This means that the public in general and journalists have access to the trials, except for circumstances defined in law when it is crucial to protect the identity of the claimant, defendant or victim.

22. Are reporting restrictions typically imposed in relation to a trial?

Civil law

In civil matters, since the processes are not so much in the public interest, reporting is not so common, and although it is not prohibited, it is harder to gain access to the trial information to report on the case (see [Question 21, Civil law](#)).

Criminal law

In criminal matters, since the procedure is governed by the principle of publicity, journalists and media can have access to hearings without any limitation, except in sensitive cases where it is important to safeguard the identity and sensitivity of the parties involved.

23. What is the main function of the trial and who are the main parties to it?**Civil law**

The function of the trial (first instance) is that the parties provide the evidence necessary to prove their claim and that the judge declares their claim well founded and valid, which can be appealed in a second instance proceeding, which finally can be subject to amparo proceedings.

The main parties of the trial are the plaintiff, the defendant and the judge.

Criminal law

Under the provisions of the National Code of Criminal Procedures, the criminal procedure comprises the:

- Investigation stage.
- Intermediate stage.
- Trial stage.

The trial is the stage in which the essential questions of the case are examined and decided on in accordance with the principles set out in Article 20 (see [Question 18](#)).

The main parties to the trial are the defendant and the public prosecutor.

24. What is the main role of the judge and counsel in a trial?**Role of judiciary**

In criminal trials, the parties (defendant and public prosecutor) will make their case orally in the presence of the judge, who will listen to the debate and points of dispute setting out the details of the case. The judge will not have previously heard the case and is not influenced by pre-trial background.

The immediate and personal intervention of the judge allows the concentration and continuity of the trial, which must be carried out in front of all the parties from the beginning until its conclusion, in a succession of actions that unify the debate, avoiding, as far as possible, evidence which is irrelevant or immaterial to the central aspects of the litigation.

Role of legal counsel

The role of legal counsel is to defend the law and its principles. The lawyer must be prepared to challenge the evidence of the public prosecutor. The lawyer is under a duty to uphold the best interests of the client, seeking to protect the constitutional rights of an adequate defence and the presumption of innocence.

25. To what extent are juries used?

Juries as understood in the common law tradition are not used at all in criminal or civil proceedings in México.

26. What restrictions exist as to the evidence that can be heard by the court?

In criminal proceedings, any facts can be proven by any means, as long as the means are legal. If this principle is violated, the Public Prosecutor or the defendant will risk of losing credibility in all the evidence, since the doctrine of "the fruit of the poisoned tree" is followed by the judiciary in Mexico.

Similarly, in civil procedures, to get to the truth, the judge can use any person, party or third party and/or any document, without any further limitation than their legality/permissibility and that they have an immediate relationship with the disputed facts.

27. Which party has the burden of proof in a trial and at what standard is this burden met?

Civil law

In civil proceedings, the general rule is that the burden of proof lies with the party that asserts that another party has breached an obligation owed to him or her or his or her rights. The party only needs to prove the fact or act that gave rise to the obligation, not that the obligation survives.

Criminal law

In criminal proceedings, the burden of proof lies with the prosecution.

28. What verdicts can the court give?

Civil law

Verdicts can be declaratory or constitutive depending on the nature of the claim. In the declaratory verdict, the judge only acknowledges a previous legal situation with retroactive effects, while a constitutive verdict creates a new legal situation with effects from the day the sentence is pronounced. Examples of declaratory verdicts are those that declare the:

- Invalidity of a legal act.
- Forgery of a document.
- Scope of a contractual clause
- Acquisition of property by adverse possession.

By contrast, a constitutive verdict creates a new legal situation instead of acknowledging a previous one. Such a verdict is effective from the day it is pronounced. A divorce decree is an example of a constitutive verdict.

Criminal law

Verdicts in criminal trials can be an acquittal or a conviction. If the defence manages to prove the innocence of the defendant or if the Public Prosecutor fails to sustain its claims, it is very likely that the judiciary will resolve in favour of the defendant. When there is strong evidence, or the defence fails to undermine the presumptions of the Public Prosecutor, the verdict is most likely to be a conviction.

29. What range of penalties/relief can the court order upon a verdict?

Civil law

The penalties and relief in civil procedures depend on the nature of the claim and the evaluation made by the judge. Types of relief include:

- Rescission.
- Specific Performance.
- Payment of liquidated damages.
- Payment of damages.

Criminal law

Under the National Code of Criminal Procedures, the penalties will depend on the type of the crime in question and include:

- Prison
- Confinement
- Prohibition to go to a certain place.
- Pecuniary penalty.

- Confiscation.
- Suspension of rights.

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